

REMARKS

Claims 2-19 and 21 are currently pending in the application. Claim 20 has been cancelled. Claim 1 was previously cancelled. Applicant respectfully requests reconsideration of the pending claims in view of the following remarks.

Claim Rejections – 35 U.S.C. § 112

The Examiner rejected Claims 3, 4, 8, 10, 14 and 21 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner indicated that the specification does not provide support for the claim limitations related to the "substantial" shape and direction of device structures in these claims.

Applicant respectfully disagrees. M.P.E.P. § 2163.04 indicates that "[t]he inquiry into whether the description requirement is met must be determined on a case-by-case basis and is a question of fact. *In re Wertheim*, 541 F.2d 257, 262, 191 USPQ 90, 96 (CCPA 1976). A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. (citation omitted). The examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims." (citation omitted)

M.P.E.P. § 2163.04 continues: "In rejecting a claim, the examiner must set forth express findings of fact which support the lack of written description conclusion (see MPEP § 2163 for examination guidelines pertaining to the written description requirement). These findings should: (A) Identify the claim limitation(s) at issue; and (B) Establish a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. A general allegation of 'unpredictability in the art' is not a sufficient reason to support a rejection for lack of adequate written description. A simple statement such as 'Applicant has not pointed out where the new (or amended) claim is supported, nor does there appear to be a written description of the claim limitation '_____' in the application as filed.' may be sufficient where the claim is a new or amended claim, the support for the limitation is not apparent, and applicant has not pointed out where the limitation is supported."

Applicant previously indicated where the particular claimed elements at issue are supported in the specification. In Applicant's response filed on November 4, 2010, Applicant provided the following:

Claim 3 recites in part a "substantially spherical-shaped" projection. Claim 4 recites in part a "substantially semi-spherical-shaped" projection. Claim 21 recites in part a "substantially spherical-shaped" component. As shown in several of the figures, including FIGS. 2 and 3, the support member 54 is "substantially spherical-shaped" or "substantially semi-spherical-shaped." Accordingly, at least FIGS. 2 and 3 provide support for the above subject matter of Claims 3, 4, and 21, and no new matter was added in amending these claims to recite "substantially" instead of "generally." Applicant respectfully requests that the Examiner withdraw these rejections.

Claim 8 recites in part that “the track is oriented in a substantially vertical plane.” As shown in FIG. 6, the linear bearing 60 is “oriented in a substantially vertical plane.” Accordingly, at least FIG. 6 provides support for this subject matter, and no new matter was added in amending Claim 8 to recite “substantially” instead of “generally.” Applicant respectfully requests that the Examiner withdraw this rejection.

Claim 10 recites in part that “the track is oriented in a substantially horizontal plane.” As shown in FIG. 6, the bearing assembly 68 is “oriented in a substantially horizontal plane.” Accordingly, at least FIG. 6 provides support for this subject matter, and no new matter was added in amending Claim 10 to recite “substantially” instead of “generally.” Applicant respectfully requests that the Examiner withdraw this rejection.

Claim 14 recites in part “a carriage adapted to move in a substantially horizontal direction along the track.” As shown in FIGS. 8, 9, and 11, the car 82 is “adapted to move in a substantially horizontal direction” along the bearing assembly 68. Accordingly, at least FIGS. 8, 9, and 11 provide support for this subject matter, and no new matter was added in amending Claim 14 to recite “substantially” instead of “generally.”

For at least these reasons, Applicant believes that these claim limitation are fully supported in the written description, and that the specification conveys with reasonable clarity to those skilled in the art that, applicant was in possession of the invention as now claimed.

Accordingly, Applicant respectfully requests that the Examiner withdraw this rejection.

The Examiner rejected Claim 20 under 35 U.S.C. § 112, second paragraph, as being indefinite.

Applicant has cancelled Claim 20, therefore this rejection is now moot.

Claim Rejections – 35 U.S.C. § 102

The Examiner rejected Claims 2, 5-7, 9, and 11-20 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,947,981 (“Cosman”).

Cosman does not disclose the subject matter of independent claim 2. More specifically, Cosman does not disclose an upper body positioning device connectable to a couch of a radiation therapy treatment system, the upper body positioning device comprising at least the following elements:

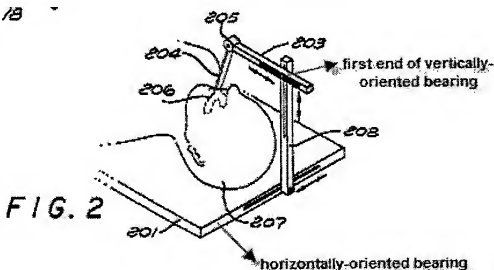
(a) a first assembly connectable to a second end of the frame, the first assembly including a vertically-oriented bearing having a first end and a second end, the first end extending through an opening in the frame, the second end of the frame configured to move

along the vertically-oriented bearing to provide a first range of motion of the frame relative to the couch about the pivot point; and

(b) a second assembly including a horizontally-oriented bearing, the second end of the vertically-oriented bearing configured to move along the horizontally-oriented bearing to provide a second range of motion of the frame relative to the couch about the pivot point.

Rather, Cosman discloses a head and neck localizer to be used in conjunction with a diagnostic radiography system including a couch 201 supporting the patient's torso, extremities and head. The head and neck localizer includes "an arm structure which has, in this case, a vertical element 202, a horizontal element 203, a last link 204, which articulates on joint 205, and there is a dental impression tray 206 which is fit to the patient's mouth or teeth." Column 3, lines 20-29. Fig. 2 of Cosman, reproduced below, illustrates how the arm structure "mounts onto the couch and comes over the patient's head from the top."

The Examiner has identified the couch in Cosman as including component 201, the frame in Cosman as including components 203, 204, 205, the vertically-oriented bearing in Cosman as component 202, and the horizontally-oriented bearing in Cosman as component 203. The Examiner has also identified the projection defining a pivot point in Cosman as the dental impression tray 206 extending from the end of the frame as shown in the marked-up version of FIG. 2 included in the Office action and included below.



First, Cosman does not disclose "the first end [of the vertically-oriented bearing] extending through an opening in the frame." Although difficult to see in the Examiner's marked up version of Fig. 2 of Cosman in the Office action, the Examiner appears to identify a small peg that couples arm 203 to arm 202 as the first end of the vertical arm 202 that extends through an

opening in the frame. There is no indication in Cosman that this peg is a part of the vertical arm 202. At best, the peg is a coupling component to secure horizontal arm 203 to the vertical arm 202 at a particular location.

Second, the head and neck localizer of Cosman does not include a "second end of the frame configured to move along the vertically-oriented bearing to provide a first range of motion of the frame relative to the couch about the pivot point." The frame (203, 204, 205) does not move relative to the couch about the dental tray 206 when the horizontal arm 203 is moved vertically. Instead, the dental tray 206 moves in a linear fashion when the horizontal arm 203 is moved.

Third, the head and neck localizer of Cosman does not include a "second end of the vertically-oriented bearing configured to move along the horizontally-oriented bearing to provide a second range of motion of the frame relative to the couch about the pivot point." The frame (203, 204, 205) does not move relative to the couch about the dental tray 206 when the vertical arm 202 is moved horizontally. Instead, the dental tray 206 moves in a linear fashion when the vertical arm 202 is moved.

In summary, the horizontal and vertical movement of the frame (203, 204, 205) along the tracks specified in FIG. 2 is merely linear. As such, there is no movement of the horizontal arm 203 or vertical arm 202 about the dental tray 206. Instead, the dental tray 206 moves horizontally when the vertical arm 202 is adjusted to move horizontally. Similarly, the dental tray 206 moves vertically when the horizontal arm 203 is adjusted to move vertically. If there is any pivoting motion, it is about the joint 205, which only has the capability to pivot about a single axis.

For at least these reasons, Cosman does not disclose the subject matter of Claim 2. Accordingly, independent Claim 2 is allowable. Claims 5-7, 9, and 11-15 depend from Claim 2 and are allowable for at least the reasons Claim 2 is allowable. Claims 5-7, 9, and 11-15 may include additional reasons for patentability not specifically discussed herein.

Cosman does not disclose the subject matter of independent Claim 16. More specifically, Cosman does not disclose a positioning device comprising at least the following elements:

- (a) a first assembly adapted to move the body part about the first axis;
- (b) a second assembly adapted to move the body part about a second axis oriented perpendicular with respect to the first axis; and

(c) a third assembly adapted to move the body part about a third axis oriented perpendicular with respect to the first axis and the second axis.

First, the Examiner has not indicated what structure in Cosman correlates to the claimed "second assembly adapted to move the body part about a second axis oriented perpendicular with respect to the first axis."

Second, the Cosman head and neck localizer does not disclose three assemblies that can move the patient's head about three axes oriented perpendicular to one another.

For at least these reasons, Cosman does not disclose the subject matter of Claim 16. Accordingly, independent Claim 16 is allowable. Claims 17 and 18 depend from Claim 16 and are allowable for at least the reasons Claim 16 is allowable. Claims 17 and 18 may include additional reasons for patentability not specifically discussed herein.

Cosman does not disclose the subject matter of independent Claim 19. More specifically, Cosman does not disclose a positioning device connectable to a couch of a radiation therapy treatment system, the positioning device comprising at least the following elements:

- (a) a frame, at least a portion of which is connected to the couch, the frame including
 - a component extending from the frame, a first assembly coupled to the frame, a second assembly coupled to the frame, and a third assembly coupled to the frame, the component defining a pivot point remote from the first assembly, the second assembly, and the third assembly, the component and the first assembly configured to provide pitch movement, the component and the second assembly configured to provide yaw movement, and the component and the third assembly configured to provide roll movement of the frame relative to the couch about the pivot point.

First, the Examiner has not indicated what structure in Cosman correlates to the claimed "second assembly adapted to move the body part about a second axis oriented perpendicular with respect to the first axis."

Second, the Cosman head and neck localizer does not disclose three assemblies that can move the patient's head about three axes oriented perpendicular to one another.

For at least these reasons, Cosman does not disclose the subject matter of Claim 19. Accordingly, independent Claim 19 is allowable. Claim 20 depends from Claim 19 and is allowable for at least the reasons Claim 19 is allowable. Claim 20 may include additional reasons for patentability not specifically discussed herein.

Claim Rejections – 35 U.S.C. § 103

The Examiner rejected Claims 3, 4, 8, 10, and 21 under 35 U.S.C. § 103(a) as being unpatentable over Cosman.

Claims 3, 4, 8, and 10 depend from Claim 2 and are allowable for at least the reasons Claim 2 is allowable. Claims 3, 4, 8, and 10 may include additional reasons for patentability not specifically discussed herein.

Claim 21 depends from Claim 19 and is allowable for at least the reasons Claim 19 is allowable. Claim 21 may include additional reasons for patentability not specifically discussed herein.

CONCLUSION

In view of the foregoing, entry of this Amendment and allowance of the pending claims are respectfully requested. The undersigned is available for telephone consultation during normal business hours.

Respectfully submitted,

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